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WORKS COUNCILS IN GERMANY BETRIEBSRÄTE IN DEUTSCHLAND

PAUL FISHER

LAW No 22 Works Councils The Control Council enacts as follows

Article I
The organization and activities of Works Councils (Betriebsräte) to represent the professional, economic and social interests of the workers and employees in each individual enterprise are hereby permitted throughout Germany.

Article II
Works Council for an enterprise shall consist of persons actually working in that enterprise. Official of the former German Labor Front (Arbeitsfront) or former member of the same shall be a member of a Works Council.

Article III
Members of Works Councils shall be elected by the employees of the enterprise.

Der Landtag hat das folgende Gesetz beschlossen, das hiermit verkündet wird:

**Betriebsrätegesetz
für das Land Baden
vom 21. Mai 1920**

Abschnitt I: Allgemeines
§ 1

(1) Dieses Gesetz ergreift im Hinblick auf das Kontrollratsgesetz Nr. 22 (Betriebsrätegesetz) und den Art. 21 der Weimarer Verfassung vom 1. Dezember 1919.
(2) Die Mitglieder der Gewerkschaften, die Arbeitervereine ihrer Mitglieder in allen Fragen des Arbeitsverhältnisses gegenüber den Arbeitgebern aufzutreten, werden durch die Vorschriften dieses Gesetzes geschützt.

...wenn wirtschaftlichen Vorübergehender gegenüber in der Erfüllung der der Gewerkschaften Betriebsräte zu wählen, wahlberechtigten ständigen 1/3 wählbaren Art. 7 bilden können. Im Betrieb gewählte nur aus einer Person

...des gelten auch Band andere gesetzliche und von Personen- werten Rechte sowie (gen Einstellung und schäftigen Arbeit- Geschäftsführer und

...sies sind Arbeiter.

...der Gemeinde das zusammenhängenden demselben Betrieb arbeiten.

...mit Ausnahme derer und von

...von, deren Beschäftigung, sondern bei in der Stellung, - lung oder Erziehung, wissenschaftl.

WÜRTTEMBERGISCHE RADIKALE Gewerkschafts-Zeitung ORGAN DER GEWERKSCHAFTSRUNDE WÜRTTEMBERG-BADEN

AUFRUF zur Wahl der Betriebsräte!

Der Gewerkschaftsbund Württemberg-Baden hat eine Arbeiter, Angestellte und Beamte in allen Betrieben und Verwaltungen auf, gewissens- und ohne Gewerkschaften die Wahlen vorbereiten und ausbreiten. Die Wahlen finden in der Zeit vom 6. bis 14. Mai 1927 statt.

Die Gewerkschaften sind beauftragt, die Wahlen durchzuführen und tragen dafür die Verantwortung.

Arbeiter, Angestellte und Beamte, sorgt, daß die Einrichtungen mit dem Grundsatz der Demokratie: Jeder hat die Stimm- und gleich auch bei der Abgrenzung der einzelnen Wahlkreis (Wahlkreis) liegt, nur ein Wahl- kreisbezirk in der Betriebs-Verwaltung und in allen Betrieben der Wahlkreis.

Wählt Männer und Frauen, die als politische und freie Menschen in der Lage sind, die Gewerkschaften mit Beiräte eine Interessen-Verbindung zu vertreten.

Wählt eure Betriebsräte in ihrer (politischen) Wahl nach dem Grundsatz: Jeder hat eine gute und überlegte Gewerkschaften wird auch ein wichtiger Bestandteil sein!

Kein Betrieb, keine Verwaltung ohne Betriebsrat

Wahlkreise und alle anderen Bestimmungen sind nur die notwendigen Gewerkschaften sind von der Ortsverwaltung des Gewerkschaftsbundes zu beauftragen.

Gewerkschaftsbund Württemberg-Baden
Der Bundesrat

Mitteilung über die erfolgte Wahl einer Betriebsvertretung

1. Name des Betriebs:
2. Was wird produziert:
3. Anzahl der Beschäftigten:
4. Anzahl der abgegebenen Stimmen:
5. Anzahl der gültigen Stimmen:
6. Anzahl der gewählten Vertreter:
7. Anzahl der Wahlberechtigten:
8. Tag der Wahl:
9. Ungültig:
10. unter 25 Jahre:
11. über 25 Jahre:

Namen und Adressen der Gewählten:

Name	Wohnung	Gewerkschafts-Bezirk
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		

Die Gewerkschaften bestätigen, daß die Wahl nach den Vorschriften des Gesetzes Nr. 22 in gleicher und freier Wahl stattgefunden hat.

Unterschriften des Wahlschusses:

Name Unterschrift Unterschrift



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Office of Labor Affairs
APO 757-A Frankfurt, Germany

WORKS COUNCILS IN GERMANY

by

PAUL FISHER

Visiting Expert Series No. 18

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FOREWORD

Opinions differ concerning the effectiveness and the desirability of works councils which may be found in almost all public and private establishments in Western Germany and Western Berlin. The works council, an institution established under law, is not an arm of the trade union but represents both union and non-union employees. It performs in the industrial plant, the commercial establishment, and public undertakings many services which, in the United States, would be prerogatives of the trade union alone. In Germany, however, the works council has had its own history, and its own traditions based on experience. In the same way, the German trade union movement has its own history and traditions. Although the functions of these two institutions do overlap, most German trade unionists accept the works council as a proper local representative body for all employees in individual establishments.

Professor Fisher, who is well-informed concerning the history of both works councils and trade unions in Germany, was invited to undertake the survey from which the present report emerged. This report is descriptive of conditions as he observed them regarding the present activities of works councils and their relationship to other institutions. It should be recognized, however, that in these changing times the works councils, too, are in process of adaptation. Although they have been changing and may be further modified in their form and functions, there seems little likelihood that works councils will be eliminated or become any less the legally authorized bodies they now are.



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NOTES ON THE AUTHOR

Dr. Paul Fisher was born in Vienna, Austria. He received his education at the Universities of Paris and Vienna. Since coming to the United States, he has taught labor economics and labor law at various American colleges and universities. At present, he is an assistant professor of economics at Dartmouth College. He has contributed a number of articles to various legal and economic journals, and holds membership in the American Economic Association, the Industrial Relations Research Association, and the American Arbitration Association.

WORK COUNCILS IN GERMANY

INTRODUCTION

This study of the works council in its relations to the unions, the employees, the employer, and the community was suggested by the Office of Labor Affairs, Office of the U. S. High Commissioner for Germany. The following report summarizes the findings of this survey which was conducted in Western Germany and Western Berlin during the summer of 1950. 1/

Almost the entire period spent in Germany on this study was devoted to actual field work inasmuch as basic background material had already been consulted in the United States. This source material was then brought up-to-date through a study of current literature and labor court decisions in Germany.

The field survey centered on visits to industrial establishments where works council members, management, and employees were interviewed separately with the aid of carefully-prepared questionnaires; on conversations with union officials, representatives of employers' associations and of the Federal and Land Labor Ministries; and on talks with individuals in various walks of public life, such as university professors, etc.

In order to obtain a representative sample, 20 plants in various parts of Western Germany were selected so as to cover a wide number of industries as well as differences in organizational form, geographic location, and economic importance. These 20 enterprises were engaged in coal mining, the manufacture of iron and steel, building and construction, the production of machinery, vehicles, electrical appliances, cement, pharmaceuticals, rubber, paper, rayon, textiles, shoes and leather, food processing, shipbuilding, printing, and insurance.

NOTE: The views herein expressed are those of the author, and do not necessarily reflect the views of the Office of the U. S. High Commissioner for Germany.

1/ Certain phases of this subject have been treated by Charles E. Shaw in "Human Relations in Industry," Visiting Expert Series No. 4, December 1948, and in "Management-Labor Committees," Industrial and Labor Relations Review, Vol. 3, No. 2, January 1950, pp. 229 - 241.

The number of employees in these firms ranged from about 100 to 25,000. Among the various forms of ownership or administration were single proprietorships, different types of partnerships and corporations, but also firms under trusteeship as a result of denazification, decartelization, and nationalization.

The fifty-odd union officials interviewed represent a cross-section of the German Federation of Trade Unions (DGB), the German Salaried Employees Union (DAG), and of the Association of Employees in Managerial Positions (VEHA). Relations between works councils and unions were discussed with top executives of the DGB at Duesseldorf, the directors of the DGB Economic Research Institute (IWI), DGB functionaries in the individual Land, district, and local DGB organizations, and with the union leaders, at national, regional, and local level, of the 11 most important unions affiliated with the DGB (total member unions number 16). Satisfactory coverage of employers' associations and Labor Ministries was also achieved.

The author wishes to express his appreciation for the extremely valuable assistance and guidance provided by the U.S. Departments of State and Labor, the Office of Labor Affairs, HICOG, and for the splendid cooperation offered by the French Division Travail and the British Office of the Manpower Adviser and, last but certainly not least, for the very cooperative attitude of all representatives of German organizations interviewed who gave so generously of their time and experience.

The interview of German public and private officials during this survey benefited from the results of the Department of State's exchange program which had enabled many of them to visit the United States. These persons had acquired sufficient insight into American institutions to give them a broader perspective of German institutions. Their contributions to the inquiry were therefore of considerable value.

In order to prevent this report from becoming unduly cumbersome, it was decided to give only a summary of the findings of this survey. A detailed documentation of all material presented in the report was omitted inasmuch as a more comprehensive study on European works council legislation will be prepared later by the author.

For the identical reason no comprehensive discussion of the whole problem was attempted. Instead, the discussion was focused on a few selected aspects.

In view of the great interest which union-works council relations have for the American observer, the greater part of the study is devoted to this subject.

DEVELOPMENT OF RECENT WORKS COUNCIL LEGISLATION

Resume of Works Council Legislation

The German works council, which originated immediately after World War I, is basically an employee shop representation group elected by all persons employed in a particular establishment whether or not they belong to a trade union. Its major functions are the settlement of grievances, particularly those arising from dismissal, the application and enforcement of collective agreements, and the conclusion of shop agreements. Other duties and rights vary with the particular act of legislation.

Since the first Works Council Law in 1920, works councils in Germany have been governed by legislation which expressly defines the conditions and procedures for their formation and which enumerates their responsibilities and prerogatives. Under the Nazi regime, they were completely stripped of their democratic character and functions. Members of the so-called "Councils of Confidence" were nominated by the employer and by the plant representative of the German Labor Front.

One of the first actions of the Occupation Authorities was the adoption on April 10, 1946 of Control Council Law No. 22 which permitted the establishment of democratic works councils and which sanctioned the many works councils which had sprung up spontaneously immediately after the occupation began.

Control Council Law No. 22 was followed by German legislation in various Laender which, in almost all instances, continued in general the outlines of the Law of 1920, but which also expanded substantially works council rights and duties. In three U.S. Zone Laender (Hesse, Wuertemberg-Baden, and Bremen), such laws were passed by the State Legislatures in 1948 and 1949. ^{1/} In the French Zone, a decree on works councils was issued in Land Rhineland-Palatinate in 1947, while similar legislation was adopted in 1948 and 1949 in Baden and Wuertemberg-Hohenzollern.

In accordance with enabling provisions in the Land constitutions, some of the Land works council laws granted labor the right of so-called "economic codetermination," the right of the employees through their representatives to participate in the economic phases of management. Economic codetermination clauses of the Hesse and Wuertemberg-Baden laws were suspended in 1948 by U.S. Military Government pending clarification by the Basic Law (Federal Constitution) as to whether the right to legislate in this area would be reserved to the Federal Government or to the Land Governments. Similar provisions in the

^{1/} Editorial Note: A works council law was enacted in Bavaria in October 1950, after the present report had been completed.

South Baden law remained ineffective owing to non-approval by French Military Government of implementation legislation setting up mediation boards for the settlement of disputes arising from the application of "economic codetermination". In view of the expressed policy of U.S. Military Government, Bremen recast its law which was then under consideration and omitted any reference to economic codetermination.

Each works council law differed sufficiently from one another to make life difficult for an enterprise with plants in several Laender. This circumstance alone would have constituted sufficient reason for a federal law which became possible after the Basic Law went into force. Under the Basic Law, concurrent powers of legislation in this field were given to the Federal and Land Governments with the proviso that federal legislation would supersede a Land enactment. It was not for the aforementioned reason, however, nor because of the traditional German preference for uniform, centrally-administered legislation that the struggle for a federal law began.

The basic issue was rather the question of economic codetermination at the level of the general economy as well as at the level of the individual establishment. In the latter part of 1949, pressure upon the Federal Government to enact a federal works council and codetermination law became so strong that Labor Minister Storch (CDU) called for discussions between trade unions and employers' organizations in the hope that these two groups would agree upon a set of principles which could be embodied in law. Complete agreement could not however be reached at the conferences in 1950 at Hattenheim (January 9 and 10, March 30 and 31), Bonn (May 24, June 2, 9, 23), and Maria Laach near Bonn (July 5 and 6).

Considerable agreement was reached on labor's right to codetermine on an equal level with employers' organizations in determining overall economic policy. The crucial unresolved issues, which still await settlement, pertain to economic codetermination at the plant level, especially with regard to the number of labor representatives on a Board of Directors and to whether the employee representatives could be chosen by the trade union from among persons not employed in the given establishment.

In April 1950, the U.S. High Commissioner lifted the suspension which U.S. Military Government had imposed in 1948 on the economic codetermination provisions of the Hesse and Wuertemberg-Baden works council laws. As previously noted, these clauses had been suspended until the Basic Law decided whether the Federal Government or the State governments

were to have competence over legislation in that field. With the Basic Law granting concurrent powers in this area, the U.S. High Commissioner had nevertheless given the Federal Government some period of time within which to act. After a substantial period had elapsed since the formation of the Federal Government, the U.S. High Commissioner felt that he could no longer justifiably suspend the operation of Land legislation on the subject.

While the struggle for federal legislation was still going on, several additional Laender hastened to replace or to implement Allied Control Council Law No. 22 by legislation of their own. (In some Laender where works council legislation had been passed, the Allied High Commission annulled Law No. 22.) In some instances, a Social Democratic majority, uncertain of its political future in the particular Land, wishes to place such a law on the statute books and on the record. This is probably the explanation for the law passed in Schleswig-Holstein on May 3, 1950. For a similar reason, Bremen was reconsidering reenactment and implementation of those economic codetermination provisions which had been dropped from earlier legislation.

In other instances, an attempt was made to influence the fight in Bonn by a "model" law incorporating those features which the respective sponsors considered desirable. This is the intention of the SPD majority in Hamburg in preparing a works council law. On the other hand, a conservative Landtag in Bavaria succeeded in converting a draft, originally prepared by the unions but then modified in conference, into a piece of legislation which would severely restrict the role of the works council in comparison to that granted under other Land laws. At the time of this report, the Hamburg, Bremen, and Bavarian bills 1/ had not been enacted. The Bavarian law, which was passed by the Landtag in August, was subsequently returned by the Senate with certain objections to the Landtag which has referred the bill back to committee.

As for federal legislation, the Parliament has now received three separate bills, one of which was submitted by the CDU/CSU fraction of the Bundestag and another, based largely on a DGB proposal, was introduced by the SPD Bundestag representation. In September 1950, the Federal Government sent a Cabinet-approved draft law to the Bundesrat which transmitted the bill, together with a number of recommended changes back to the Cabinet. At last report, the Federal Ministry of Labor had announced its intention to consult separately with employers' and union representatives before sending the bill to the Bundestag.

1/ Editorial Note: The Bavarian law was enacted in October 1950.

The reason for sketching this legislative struggle at this point is primarily to indicate the climate in which this investigation was conducted. The arguments of both sides on this topic permeated all interviews and discussions which were thus lent a flavor of rare timeliness.

Works Councils and other Institutions

A law which permits or compels the election of representatives by the employed personnel of an enterprise does not ipso facto endow these representatives with the power to discharge their various duties successfully. Except for special cases, employee organizations resting on the narrow basis of an individual establishment or enterprise lack the economic strength necessary to have employee demands prevail against the superior economic position of the employers. In view of this circumstance, the works councils, if acting unassisted, are rather weak elements in the economic and social life of a nation.

Consequently, the works councils tend to fall easily under the domination of other and stronger social forces which may use them in the pursuit of their own purposes. The most likely institutions which may gain influence or even domination over works councils are the unions, the political parties, the employer, and the State. Even if any one of these institutions, for example, the union, should secure preponderant influence over the works council, it may be forced to combat continually the eventually conflicting aspirations of the other institutions. Its hold may thus be precarious.

To ensure its influence with the employees, any social force which has achieved temporary control over the works council may be greatly tempted to abolish the entire institution. The classical examples of that policy are offered by the fate of works councils under the Nazi regime and, more recently, in the Soviet Zone of Germany. When the works council elections showed a considerable disapproval of the respective political and economic systems, free elections to the Nazi shop councils were ended and, in the Soviet Zone, the works council itself was abolished.

Works Councils and Unions Before 1933

The history of German works council legislation after World War I is well-known. It may therefore suffice to recall here that the works council of 1918 was not of the union's making. To a very large extent, it was the result of attempts by the radical left (the Independent Socialist, Spartacus and, subsequently, the

Communist Party) to create in the workers' councils - the counterpart of the Russian soldiers-workers-farmers' councils - the bastions from which the class struggle could be unleashed in the plant and the revolution carried through to a rapid and successful conclusion.

Furthermore, there were not merely isolated works councils but the making of a works council movement which aimed at replacing the unions. It took bloody street-fighting and a prolonged political battle between the radicals and the middle-of-the-road, Socialist (SPD)-controlled unions before the compromise works council law of February 4, 1920 was evolved. Moreover, many years elapsed before the unions gained control over the works councils wresting them fairly successfully from domination by the Communist Party (although Communist Party members remained here and there in leading works council positions). By and large, the unions were also able to contain the employers' influence on the councils. Substantial as the union victory was, it was never complete or secure. Employer influence was particularly evident during the depression. Furthermore, it was achieved only at the expense of immediate, intimate, everyday union-worker relations in the shop. All those important services and contacts which, for example in the United States, are performed by union shop stewards, had to be abandoned to the works council, the shop organization of organized and unorganized workers as well. It became, hence, necessary to limit the respective areas of action.

A distinction was drawn between those questions arising in the shop and those which can be settled only at the industry and national (supra-plant) level. Collective bargaining, political action, those welfare activities affecting the worker after the employment relationship had been severed, fell into the latter category and, therefore, belonged to the unions. The intra-shop activities were assigned to the works council.

One of the principal instruments employed in this struggle between the two potentially competing forms of workers organizations, the union and the works council was consequently to delineate carefully, i.e. to restrict the area of permissible works council activities in the law, and to leave the essential function of wage determination in the hands of the unions. In the latter field, the works council was charged only with the obligation to police the collective bargaining agreement (as well as the application of protective labor legislation). Shop agreements could be concluded with the employer, but these agreements could only improve but not reduce the benefits provided by the collective agreement. The second equally important task which confronted the unions was to gain actual control over the works council membership. The unions confronted the Communist slogan of "All the power in the hands of the councils" with a formula of their own: "The works council is nothing but the extended arm of the union".

UNION AND WORKS COUNCIL RELATIONS UNDER LEGISLATION SINCE 1945

Introduction

An outstanding feature of the labor scene in 1945 was the spontaneous reappearance of the works councils. In many instances, persons who had been ousted from their elected works council positions after the advent of the Nazi regime resumed their office, sometimes without the benefit of an election, sometimes with the active support of the employer. These persons temporarily operated the business where management had fled, they assisted in the denazification program, and they helped to reestablish the destroyed labor organizations. Most of the men who took on these jobs were pre-1933 trade unionists with moderate views. Others, although also unionists, belonged to the Communist Party to which they looked for directions.

When, in the ensuing years, the unions finally emerged from local, Land or zonal, and bizonal stages to a Western German Trade Union Federation, founded in October 1949, they had to find again a modus vivendi with the works council. By 1949, the works councils had again become part of the German labor tradition, celebrated by their achievements after the end of the war as well as by the sacrifices of works councillors during the Nazi regime.

This time, however, the unions were in a more favorable position than they had been when the works councils were originally established under the Weimar Republic. The technique of controlling works councils had not been forgotten, and the problems were not dissimilar from those encountered in the past.

Most works councils in the key industries were manned by trade union men, although some of them were militant members of the Communist Party. Employer influence remained rather weak until currency reform (June 1948). As in 1918, the State not only refrained from interfering with the unions, but was actually willing to make concessions to organized labor. Furthermore, Allied Control Council Law No. 22 provided a basis for strengthening the union's influence upon works councils in an unprecedented way.

Significance of Law No. 22

Law No. 22 expressly permits the unions to participate in the preparatory committees for works council elections and in organizing the elections. It also gives them the right to nominate candidates from the employee roster. This provision not only gives the unions a very significant initial advantage but, even more important, secures for the unions complete influence on the entire gestation of works councils.

Article VII provides that the works councils must exercise their functions in cooperation with the recognized unions. This section could become a powerful weapon indeed in the hands of a skilful union lawyer. For example, one interpretation has been that all actions of the works council, including the conclusion of shop agreements, require union consent, i.e. union co-signature. Where Law No. 22 was understood, it succeeded in substantially increasing the union's hold on works councils beyond the point which the Law of 1920 per se would have made possible. The Weimar Law (Arts. 8, 78e) merely stated, and rather ineffectively, that works councils should act with due regard (im Benehmen) for the views of the unions. The area of permissible works council activities was severely restricted by Law No. 22, as in the Weimar Law, in order to prevent dual unionism.

Significance of State Legislation

Some of the novel features introduced by Law No. 22 also penetrated into State legislation. The importance of other significant aspects of this law was not clearly understood by the unions which failed to press for their adoption. Some State laws, however, devised other means of increasing the union control of works councils. A major device employed in State legislation, besides that granting the unions the right to participate in council elections (compulsory in Land Rhineland-Palatinate), is the opportunity given for the union to attend works council meetings and to address the employees at the quarterly general plant assemblies.

In Hesse, for example, the union (and one-fourth of the union shop stewards in the plants) may call a works council meeting (Article 19 (2)) and a general assembly (Article 23 (3)). At the general meeting, the union may initiate a move for the recall of some or all members of the works council (Article 25). In contrast to the Weimar rule which prevented the council from favoring union

over non-union workers, the Hesse law entitles the council to assist the union in its work (Article 30 (2)).

In Wuerttemberg-Baden, union representatives have the enforceable right, under certain circumstances, to visit the plants (Article 1 (2)). Moreover, in the absence of a collective agreement, the shop agreement must have union approval (Article 17 - 1). The Bremen law (Article 33 - 2) may be read as requiring union consent to any shop agreement. Under the Rhineland-Palatinate law (Article 56), the unions and employers' associations have the right to sit in on all negotiations between the works council and the respective employer.

Division of Functions

As was true in the 1920 law, the union has retained the exclusive function to negotiate collective wage agreements. The works council retains the policing function, but has also been entrusted with the essential processing of grievances and, within limits, with the negotiation and administration of the shop agreement. In addition, all State laws grant the works council the right of so-called codetermination in the personnel and social areas, and some State laws also accord this right in the economic field. These are precisely the features which deeply affect the day-to-day employee-employer relationship which represent, in the United States, an essential and highly-valued part of the union's service to its members.

Legislation and Union Control

Consequently, the American observer may question whether the delineation of functions by law on the one hand, and all the new legal safeguards for union control over the works council on the other hand, suffice to keep the employee from placing more value on the employer-financed and, in most cases, compulsory works councils than on the trade unions. What is there to prevent the worker from deserting the union, or from keeping himself aloof as long as a legally-established works council must represent his interests? Add to the institution works council the possibility which the German Labor Law provides for the administrative extension of collective bargaining benefits to non-union members, and the free rider has all the rights and none of the duties of the unionist. A question may also be raised as to whether the degree of union control provided by law is adequate to prevent the works councils from obstructing union policy and as to whether the works council may not ultimately destroy the union, the only effective representation of labor.

Existing works council legislation per se is certainly not enough to guarantee union influence, particularly as some of it

remains so much ink and paper. Except in the rare instance of rival union claims, union influence on the works council election procedure is often subordinated to the influence of political groups. Usually, all candidates belong to the union, but the decisive issue is their political affiliation. Despite an election system which recognizes only the election of individuals and not of party lists, extra-legal caucuses of SPD, CDU, and Communist Party cells in the plant will engineer the elections in many instances. 1/

In most works council elections, the issue is not unionism vs. non-unionism, but KPD against SPD or CDU. Inasmuch as the unions are politically neutral, all lists claim to be union-sponsored, but actually most works council elections are held along strict party lines. Such a procedure still leaves the works council under control, at least formally, of the union. It merely identifies the elected individuals, in the minds of the voters, more closely with the respective political party than with the union. As long as party affiliation does not interfere with union allegiance, the union has no reason to complain. Union interest is involved, however, where the danger exists that one of the parties may wish to capture or destroy the union.

Not many other rights of the unions to control works council activities which the various laws had established were utilized. The one which was practiced most widely was the right of union officers, at the invitation of the works councils, to address quarterly works assemblies.

1/ For example, an SPD-CDU coalition in a large automobile plant succeeded in unseating the KPD-dominated works council. On the other hand, an SPD majority, in a decartelized steel plant visited, was ousted by a CDU-KPD alliance. It is usually the KPD which maintains a strong political cell in the plant, while the other parties act only defensively.

NON-LEGAL METHODS OF UNION CONTROL OF WORKS COUNCIL ACTIVITIES

Fortunately, there are also other means at the disposal of the unions for the purpose of maintaining control over the works council. These include indispensable union services such as legal advice, publications and training, union-sponsored meetings of works councils, union plant organization, increased union influence on the shop agreement, and merging of works council and union office.

Legal Advice and Aid

Most grievances are presented in the form of legal claims. This results from the fact that the essential provisions of a workers' employment contract are fixed by law and by collective agreement (which, under certain circumstances, displays all the characteristics of law) as well as from the situation that the relationship between management and works council, rather than being conducted in a spirit of give-and-take, all too often is kept strictly to the legal minimum. In an atmosphere of strict adherence to the letter of the law, worker demands are studied not merely on the merits of the case, but always with reference to their eventual effects as precedent, and their justification in law or contracts. Most arguments turn consequently upon the interpretation of the law, or of the collective contract by the courts, the commentaries and the law professors. It is no coincidence that most personnel managers possess legal training or have legal departments at their disposal.

In processing these grievances, the works council is therefore constantly in need of legal advice which is offered by the union. Each local and regional union office maintains at least one legally-trained secretary who also represents union members' claims before the lower labor court where lawyers are barred. Works councils in larger enterprises are hence in almost daily contact with the unions for purposes of securing advice or perhaps legal representation for the aggrieved employees. At least one union, the Mining Union, has issued a handsome loose-leaf handbook containing the pertinent legal texts and collective agreements for the works councillors.

It is probably this need for legal assistance which ties the works council most closely to the union. Without the constant advice by the union on the interpretation of contract and law, the council cannot offer adequate service. A non-union works council, which has no access to such aid, may soon be replaced by the voters.

Moreover, the DGB and some of the larger member unions furnish their field officers and works council members current information on all legal developments and events in this field of labor. Such information may be contained in monthly publications (such as "Die Quelle" of the DGB) and special bulletins.

Union Training Program

The unions offer, furthermore, extensive schooling to the works councillors. Schools fulfill the double purpose of preparing works council members for their work and of imbuing them, at the same time, with the union spirit. To stress the union ties, the unions quite deliberately forego making any differentiation between work councillors and union officers proper. The desired effect is that works council members display the same esprit de corps which unites all active union leaders.

The common treatment accorded to union officers and works council members which aims to make the latter part and parcel of the internal union structure is also noticeable in the publication program. Both groups receive the identical type of information addressed especially to them. Besides this effort, the DGB and several of the larger unions (metal workers, miners, postal employees, to mention a few) have established a very comprehensive system of schools for their officials and especially for works councillors. The system has its base in the local training course, normally an evening class in a public school.

Graduates may apply for admission to the eight permanent schools maintained by the DGB throughout Western Germany for more specialized work of one or two weeks' duration. The most promising graduates of a number of these full-time courses may be admitted to the three university-like institutions, fully or partly-financed by the DGB, the Academy of Labor in Frankfurt, the Social Academy in Dortmund, and the Academy for Communal Economics in Hamburg where, as a rule, a full year may be spent. Living, traveling and other expenses are largely defrayed by the unions.

To give an idea of the extent of this program, it may be useful to mention that, in Northrhine-Westphalia alone, the DGB training program - and to give a full picture the work of the constituent industrial unions in this area would have to be added - processed 4,000 students in one semester. Several of these training courses were especially designed for works councillors, while others, such as classes in labor law, business economics, social policy, accident prevention, and industrial hygiene, were open to them as well as other union officers. Because of the special interest which the nationwide discussion of codetermination evoked in the minds of the works councillors who at any moment expected to be called upon to exercise their new rights and duties, special classes on codetermination in the plant, and on the supra-plant level - attracted a greater than usual number of pupils. In Northrhine-Westphalia, 70 classes sought to prepare 2,000 students in over four months for their future assignment. This very impressive

program is serviced with a bi-monthly journal ("Die Aussprache"). In Hesse, the union tried - but failed - to win legislative support for the idea of a paid leave of absence for works councillors who engaged in union training programs. 1/

Despite the efforts of the German labor movement, it was found that neither the training nor special bulletins fulfill all expectations. The information bulletins, which are somewhat dull, were not always read. A perhaps necessarily disappointingly small number of works council members is willing or able to benefit from the educational program. This is perhaps to be expected since many leading works council members are now in their late forties or older, in short, people with whom schooling does not sit well. Not many workers can afford to forego one or two weeks' pay, and many are discouraged by the sometime rather highbrow and not too realistic or practical presentation of subjects which seem to be taken directly from a college catalogue. In any case, there is a great danger that well-meaning union officers may overrate the effect of even the best bulletin or training course.

Union-Sponsored Council Meetings

Convocation of works councillors by the union represents another means of inculcating union policy and discipline. Several unions and the federation arrange for local or regional meetings, sometimes as often as once a month, usually at irregular intervals. The degree of participation is generally disappointing but may be substantial when feelings are running high. Another Hesse attempt to charge the expense of attending such meetings to the employer was also defeated by the labor courts. Because of the irregular attendance records - most unions have to be content when at least one representative per plant is present - a few unions have installed a system of frequent works councils visits by headquarters personnel. Other unions found such a system too costly. The miners, who are aided in their policy by the fact that they are confronted almost exclusively by relatively few but large enterprises find, however, a combination of meetings and visits quite effective.

Union Stewards

A method of control of potentially great importance is the union plant organization. Many unions maintain in addition to their (geographically) local organizations a system of shop stewards in the plants (Betriebs-Vertrauensleute). Unlike the works council,

1/ Editorial Note: A Hesse law of November 10, 1950 provides for a paid leave of absence, varying from one to four weeks, to permit works councillors to attend union training courses.

these shop stewards are elected by the union members only. According to the various union constitutions, each shop or division elects its union representatives. The metal workers provide in principle for one shop steward for every 30 union members. The shop stewards solicit membership, collect dues, discuss and implement union policy, and provide the liaison between union members and the works council. Apart from the shop stewards, the union members also elect delegates to union conventions. While the delegates represent the union members outside the plant in the local, regional or national union organizations, the shop stewards act within the plant. There they hold their own meetings, form the "shop steward body", elect their own chairman etc.

Theoretically, the shop stewards and their assembly could exercise a controlling function over the works council and keep it in line. In many plants organized by the Metal Union, the works council actually reports monthly to the shop stewards. (In one case, the employer even consented, in a shop agreement, to pay for the time spent in such meetings during working hours by his 80-odd shop stewards.) This meeting could become a check on, and a source of information and union inspiration for the works council. Actually, the works council chairman and the other members of the works council so often unite in their person some important union office - they are the presidents of the local or the elected shop steward chairman, delegate, if not members of the national union executive committee - that the position is normally reversed. As a rule, the shop stewards then function as agents of the works council in their respective shops and divisions where they perform council functions, such as the processing of grievances, and refer to the council only those grievances which they are unable to settle.

Shop Agreements

To prevent works councils from entering into shop agreements which may prove embarrassing for the union, e.g. interpreting union rules or provisions of the collective agreement in a way which is unacceptable to the union, some unions have attempted to participate in the field of plant agreements. Thus far, the unions have failed to avail themselves of the opportunity afforded by the collective bargaining law of February 2, 1949 which permits the determination of intra-shop conditions by the collective agreement. Instead, they have preferred either to recommend model shop agreements to the works councils, or to step in wherever a dangerous situation was developing and, in most cases, they were in time to prevent any damage. The miners, however, are now thinking of establishing a model shop agreement in mutual understanding with the employers' association. Thus, this area of activity heretofore reserved for

the works council, by being raised from the shop to the supra-plant level, would be transferred, in effect, to the union reserve of collective bargaining.

Dual Office-Holding

The strongest factor of union strength in the works councils consists in the circumstance that most works council leaders in the larger enterprises, besides being union members of long standing, also hold some kind of union office. This connection serves better than any law to assure rather close and intimate cooperation between the union and council. To some extent, this present situation is a historical accident arising from the unique age distribution of the German labor force in which two wars have created a large gap between the old and very young workers. It was only the older group, having had experience in a free labor movement before the Nazis, who were equipped to assume the leadership in the works councils and labor unions. Their natural successors in the 25-40 age group are, by and large, either missing or as yet unwilling to assume responsibility. But this cumulation of works council and union office may also be the result of a definite union policy. 1/

1/ The Austrian labor movement, for instance, has always attempted to integrate those works council chairmen who by repeated re-election have given proof of their ability to appeal to the rank-and-file into the union hierarchy. Where those elected worker leaders, because of the importance of the firm in a given industry, commanded the respect and allegiance of a significant number of workers, the Austrian unions did not hesitate to offer those men a seat on the union national executive committee.

ADVANTAGES OF UNION CONTROL

With the aid of aforementioned means, the unions have achieved, in a surprisingly short period, an equally astonishing degree of more than nominal control over the works councils. What advantages have the unions been able to reap from this development?

Besides the assistance given by the works councils, in many instances, in rebuilding the unions, works councils have also played a significant role in union organizing activities. Almost all postwar works council laws give works councils the right to contest the hiring, transfer, promotion, and discharge of workers on certain grounds (personnel codetermination). As far as hiring is concerned, the employer has to inform the works council of the name of the applicant to be added to the staff. In a Bremen shipyard, the union proceeded to veto the hiring of a man who refused to join the union. (The Bavarian draft legislation - and the Weimar law - would exclude such an attempt at enforcing the union shop.) A less drastic method in general use by works councils is to hand out to all newly-hired men, when sent for clearance to the works council, union membership applications. While there is no evidence that transfers and promotions have been utilized to promote union aims, some reason exists to believe that the works councils will be influenced by union considerations in dismissal cases. They will favor union against non-union men, other things being equal - and sometimes not so equal. Similar preference has been known to exist in the handling of grievances although such actions are equally beyond the pale of the law.

The works councils also provide a reservoir for future union leadership by providing a good training and proving ground. Many present-day union officials came up this way. A popular and vigorous works council leader will soon be voted a union delegate, then perhaps an honorary chairman of the local, and later on elected to a salaried union office. From here on, he may move upwards in the union hierarchy.

Another advantage sometimes claimed by the unions is hard to substantiate. In those Länder where works councils are compulsory and where works councils with no union affiliation may occasionally result, the union may be able to organize the entire plant by the simple device of enrolling the works council. Only one such instance could be established beyond doubt. The ability of works councils, once organized, to keep the newly-organized members in the union and to act as a nucleus of strength, is better established.

DANGERS TO THE UNION POSITION

Statement of the Problem

There is, however, also a series of dangers to the union position involved in the German works councils. What are they and to what extent have they been met by the unions? The following discussion will deal with: 1) the works council as a competing labor organization; 2) the works council as a means for other social forces (rival unions, political parties, employer) to wean the allegiance of the workers away from bona fide unionism; and 3) a potentially harmful works council influence upon union policy, structure and strength. Not all of the potential dangers are real. On the other hand, not all of those which are real are fully met.

Possibility of Dual Unionism

Inasmuch as the works council as well as the union aim to represent the interests of the workers, what prevents the works council from becoming a dual union? Union authority is derived from a voluntary membership. If the law requires the establishment of works councils, but not a union membership, works councils may come theoretically into being which have either no union connection, or a non-union majority. However, the latter hardly exist at all. Wherever they do appear, the union makes a concerted effort to win over the majority and in all reported instances, except in a small textile plant, the effort was successful. Works councils which have no union connection, however, exist quite often.

An analysis of this group is likely to show that non-union works councils are found precisely in those areas where union organization is difficult, costly and disappointing, such as in small, handicraft and patriarchal enterprises, in rural areas, and in industries with a high percentage of female workers. In sufficiently numerous instances, works councils in such unorganizable areas are not even formed or disappear after serving the interests of the employer for a time. Their mortality is especially high in a depression.

In small-scale enterprises where the union can hardly gain a foothold, works councils are not formed, even where they are compulsory by law. In Wuertemberg-Hohenzollern, for instance, only 47 percent of the workers participated in 1949 in works council elections in enterprises with 5-19 employees, only 64 percent in firms with 20-49, but 99 percent in plants with more than 200 workers. Since small-scale industry predominates in this State,

this circumstance may well mean that only between one-half and two-thirds of the potential number of works councils were actually established. Inasmuch as it is mostly the unorganized workers who often fail to avail themselves of the right to elect a works council, these workers remain in these cases completely unrepresented. In these instances, the council does not replace the union. In practice, 85 percent of all elected works council members in Western Germany are union members. This does not mean that the unions have organized 85 percent of all employees. As usual, the organized workers are more active, stand for election, and receive the votes of the unorganized as well as that of their fellow unionists.

The unorganized 15 percent of the works councillors are often found among salaried employees who, for a variety of reasons, may hesitate to join the union, but who have been voted the spokesmen of the equally unorganized white collar workers. As a rule this group is too small to cause any difficulty for the union. Only where there exists a separation of manual and salaried employee representatives into two group councils with possible employer influence upon one of these groups, the organized division of the works council may experience difficulties.

A danger of dual unionism is not presented by the individual works council which is too weak to provide sufficient benefits for the workers to offer the union serious competition, but rather by an association of works councils - a works council movement. The German trade unions are well aware of this threat which caused them to prevent during the 1920's the formation of regional and federal works councils for which Article 165 of the Weimar constitution had provided. When, after 1945, the works councils of the four major Ruhr cities wished to form such an association, the unions were again very quick to prevent this from happening. The only difficult problem arises from the borderline case of the joint works council: a council of works council delegates in multi-plant firms and multi-firm combinations (quite prevalent in the highly concentrated German industry).

On the one hand, every labor organization must adapt itself to the structure of the employer organization in order to be effective. Hence, the management of a multi-plant enterprise must be met by an equally centralized works council, a committee which consists of the delegates of the individual works councils in the various plants of the enterprise. Control Council Law No. 22, aware of the danger such a structure may constitute for the union, looked askance at such institutions. The State laws, following the lead of the Weimar law, readmitted the central works council. Where the union is strong, no ill effects have been noticed. On the other hand, central works councils in areas where there are traditional and inherent limitations upon union activities as, for

example, in government service, the postal service, and the government-owned railways, may produce in the minds of the uncritical employee the erroneous belief that he can dispense with union affiliation. In Land Rhineland-Palatinate, the Minister of Interior, supposedly upon union insistence, dissolved the central works council in the police force. The reasons given by him for this step were perhaps less acceptable to the union inasmuch as they were reportedly to keep senior or junior-grade officers from being represented on the same works council.

The Rival Union Issue

Even if the works council does ordinarily not create a threat of dual unionism, it may prove the opening wedge for a rival union. At present, the position of the DGB is not seriously endangered. Rival unions appear only at the fringe of white-collar unionism. There the DGB principle of industrial unionism which claims jurisdiction over all employees from the janitor to the assistant manager clashes with the horizontal unionism of the German salaried employees union (DAG) and the Civil Servants Federation (Deutscher Beamtenbund), not to mention a few smaller splinter groups. State laws which follow the pattern of Allied Control Council Law No. 22 (Art. IV/1) provide for a single works council elected by all the employed persons. This procedure normally leaves the DGB unions in firm control and, at the same time, provides for the representation of the salaried employees. The tradition, however, of the separate group councils of manual and salaried employees which dates back to the Weimar law, is still strong. The Bavarian bill would actually vest the entire power in these groups, leaving the works council and its chairman in a position of impotency. 1/

Danger from Political Parties

The unions face a potentially more powerful danger. This is presented by the political parties. The party cells in the plant may take over union functions, the parties may split the DGB or try to gain control over it. This threat comes from the right and the left, from neo-fascist, Christian and Communistic organizations.

1/ Editorial Note: The recent Bavarian works council law provides for a single works council consisting of "group representatives" of wage earners, salaried employees and, in government service, of civil service officials. The author's comment on the authority of the group representatives was made before the final version of the law had been completed.

Thus far, the Christian labor groups (which occasionally harbor some nationalistic elements) have not manifested any strong desire to destroy the unity of the politically neutral DGB.

These groups, the refugee parties, and the nationalists have not opposed the union slate in works council elections, but this does not mean that the danger is permanently removed. Neo-fascism is probably responsible for the growing number of works council members without party affiliations. A comparison of the election results of 1949 and 1950 in 262 Northrhine-Westphalian undertakings reveals that this group's ratio has increased sharply while all other groups have suffered decreases. A similar effect could be observed in Berlin where the interconnection became evident. The increase in the share of the politically non-affiliated coincided with a decrease in the share of the unionized. The experience in Bavaria is of a similar nature. Although not all of the politically non-affiliated may be termed neo-fascists, competent observers consider this group the most important element, particularly in the building and construction industry, where many former Nazi party members, who lost their previous jobs in connection with the denazification trials, are now working.

The Communist Danger

Far more important at present than any danger from the right is the danger from the extreme left. While the number of Communist works council members has consistently declined - though the decline has been slight recently - the question must be raised as to whether the works council does not offer a particularly appropriate tool for Communist aspirations. There is no dispute as to the final aims of the KPD, the German Communist Party, but there is some question as to what priority the party assigns to the achievement of the more immediate goals as they concern labor organizations.

The consensus of persons interviewed is that the KPD is not yet seeking works council positions for the purpose of sabotaging production, but is rather interested in creating labor unrest and in gathering and transmitting information on strategic German industry. (Economic codetermination which would give the workers a considerable degree of information about the enterprise is therefore supported by the KPD for its own reasons.) Furthermore, a works council position is of immediate value to the party because of the inherent possibility of disseminating propaganda and acquiring influence in the union. Unlike the thirties, when the Red Union (RGO) split off from the Socialist Labor Federation (ADGB), the "boring from within" technique is now used. Gaining access to union office may

provide control over the working masses whose votes for the party in political elections have been dwindling steadily.

The fact must be faced that the number of votes favoring KPD works council candidates is higher than the political vote the same group of persons would give the KPD. Moreover, the number of KPD union officers is greater than the number of KPD unionists would justify. The tendency on the part of unions and employers to belittle the militancy of the Communists in their ranks or employ, or to believe that the Communists would always put union or company welfare over party discipline, or to call them harmless idealists, early Christians or Titoists, etc. is understandable because selfcongratulatory, but potentially dangerous.

If it is true that the KPD candidates for works council office owe their election to their better oratory, the greater insistency of their demands, their vigor in advocating labor's cause, their youth, skill, devotion, and training, then it would appear advisable for non-communist elements in the union (and the other political parties) to match this performance. Where this was done, as in a big machinery plant in Bavaria, the Communist majority vanished. In meeting this challenge the unions seemed greatly handicapped by the strict adherence to the principle of political neutrality. This concept made it difficult to eliminate elements which quite openly advocate their hostility to democratic unionism. The union acted decisively only where KPD works councillors who belonged to the union violated union law.

The most celebrated case is the one of a Paul Harig who recently called a wildcat strike at the steel plant Haspe in Hagen, Westphalia. For this violation of union rules, Herr Harig who, besides being works council chairman and member of the Haspe board of directors 1/, also held office in the local union organization and in the advisory board of the national union, was promptly relieved from union office and expelled from the union. This action in itself did not terminate the works council chairmanship and, for a day or two, he continued to maintain his influence over the workers from that post until discharge by the company ended this anomaly. Many observers found in this incident evidence of the disturbing lack of influence the union has over the independent works council. Whether the Anglo-

1/ Haspe belongs to the group of 24 decartelized steel plants operating under an Allied-sponsored Steel Trustee Board. Organized labor is represented on the board of trustees, on the board of directors of the individual plants, and in the management. Each plant is managed by a commercial, a technical, and a labor director. The latter has been nominated by labor but appointed by the steel trustees.

American system with its cases of occasional open defiance of the national union by a dissident (for instance, Communist-led) local would yield a different result remains an open question.

Although most unions are yet unwilling to take the final step of expelling Communists, they are wary enough of them. All efforts are made to keep them out of union office. More than circumspection will be required, however, to rid the unions of such KPD personnel as they have. To round out this picture, attention must be drawn to a growing number of KPD works councillors and union officers who resigned lately from the party. The invariable reason given was that they found party discipline incompatible with the faithful execution of their respective offices. Judged by the violent attacks by the Communist press on these renegades and by the testimony of the men working with them, these conversions are not suspect. The interviews which the writer had with some of these individuals did not offer sufficient evidence to prove or disprove a genuine change of heart.

Danger of Company-Mindedness

No evidence could be found that employers converted the works council into a company union U.S. style, i.e. used the works council to destroy the bona fide independent "outside" union. But there were many cases in which the daily contact between employer and works council members left a definite mark on the latter's thinking and actions. Their increased understanding and awareness of the problems facing the enterprise produced a feeling of responsibility (which, incidentally, is very desirable) for the possible effects of union action on the firm. This company-mindedness is the result of a quite genuine identification of workers and company interests. The short-term economic interests of the persons employed in a given company may, however, occasionally conflict as easily with the long-term policies of a union as union interests may clash with the aims of the labor movement or labor's goals with society's ends.

German trade unionism has long been aware of the problem of company-mindedness (Betriebsegoismus). The necessity for offering a corrective for this tendency provides one of the major justifications for extensive union control. It explains also the union desire for sharing together with the works council the much-heralded codetermination rights.

Reasons for Company-Mindedness

The tendency of the German worker to identify his economic interests with those of the enterprise is particularly strong, and results from the peculiar features of the German labor scene. As far as this discussion is concerned, the most important characteristics of this scene are the age distribution and the low rate of turnover of the labor force, its traditional docility, mitigated and furthered by paternalism, the Weimar works council law, twelve years of Nazi domination, the disintegration of most other social ties and related experiences of the immediate postwar period.

Let us illustrate some of these points.

In an electrical appliance plant with 11,600 employed, the average age of male manual workers is 48.7, and of male salaried employees 51.3. The average age of the works council members is 46.6. A similar picture of an over-aged work force is presented by the iron and steel industry. There the average age of manual workers of both sexes is 39.9, the mode 40. The respective figures for the salaried employees are 41.7 and 48. Workers of that age look primarily to their jobs for satisfaction of their most pressing demands. Such an attitude ties their interests to the fate of the company for which they are working.

Another striking feature is the low labor turnover. The average length of service in the aforementioned electrical appliance plant of male manual workers is 13.4, of male salaried employees 18.5. In one of the steel plants visited, 3,600 of 8,425 workers had more than 25 years of service. If a man has once devoted 13, 18 or 25 years to a job, and is in his forties, he is likely to see his economic future in terms of the company ^{1/} for which he is working and not in terms of the union, the laboring class, the industry, or the nation.

In a surprisingly large number of enterprises, jobs are family traditions. Where grandfather and father worked (and lived in company houses), children and grandchildren will continue to look after the interests of the goosewhich laid some eggs for such a long time. In a plant now managed by the third generation of partners, 600 out of 4,000 employees had more than 25 years of service. One family had contributed 365 years of continuous service to the undertaking. Feudal conditions had been conserved in this firm. The employer's family still enjoyed some attributes of the lord of the manor. The wives visited the sick and the aged. This remnant of a pre-industrial

^{1/} This attitude is not peculiar to Germany. Compare Reynolds and Shister, "Job Horizons," a New Haven Study, Yale University Press.

era is by no means an exception in Germany. The attitude of many workers (particularly of those who still operate their own garden plots and subsistence farms) towards the employers - who are frequently easily identifiable physical persons - reminds one strongly of the Prussian soldier-officer relationship, and of a feudalism from which, at times, a religious flavor is not absent. The Nazi regime deliberately strengthened these tendencies. Employers who because of such worker attitudes enjoy an unusually large degree of authority, experience little trouble in creating a strong concern for the interests of the enterprise, a house spirit in their working force and in the works council. Such concern raises problems only if it exceeds a realistic appraisal of the worker's position and, if in a conflict between union demands and enterprise policy, the works council and the worker blindly follow the enterprise policy.

Another reason for company-mindedness goes back to the Works Council Law of 1920. (Art. 66/1-3, 6.) Defining the purposes and tasks of the works council, the Law listed the council's obligation to promote the interests of the enterprise and to assist management before cataloguing the various rights which the works council had in the exercise of its duties to further the interests of the workers. Thus, the Weimar law not merely places the works council in the anomalous position of having to serve and, eventually, to reconcile two easily-conflicting interests, but puts the interests of the enterprise before those of the employees. The Nazi law of January 20, 1934 (AOG, RGBl. I, 45) simplified the situation to the detriment of workers' interests by making the employer the "leader" of the "followership". Even this principle remained meaningless, however, since the interests of both parties were subordinated to the interests of the Nazi state. As a result, no conflict was conceivable.

Allied Control Council Law No. 22 made a clean break with the ambiguous construction of the Law of 1920. The works council became the representative of the workers employed. (Art. I, cf. Labor Court Essen in "Der Ortsausschuss," publication of the DGB, Essen, II/4, p. 2). Inasmuch as tradition and inertia were however stronger, practice and some State laws harked back to the Weimar formula with the result that, in court, works council members took the position "that they had to defend the employer's interests" against worker-claimants and judges. A very successful profit-sharing scheme introduced in the Duisburger Kupferhütte A.G. found an equally logical and extreme conclusion. If the works council discharges its obligations primarily with regard to company welfare, it is fulfilling managerial functions. Acting in accordance with, but probably unaware of, a thought expressed in U.S. literature by Neil W. Chamberlain, the Duisburger Kupferhütte, in recognition of this fact, made the chairman of the works council a member of the company's top management (Prokurist). Such a practice converts the works council into a

personnel department. The union-nominated, but management-appointed, labor director in the decartelized steel industry provides another example of a labor representative who has turned manager with occasional pangs of labor conscience. These two cases merely highlight the dangers inherent in the German works council concept which charges it with the delicate task of reconciling two tasks, the one of cooperation with management, with the other of defending worker interests against management. A few very shrewd employers have taken advantage of this ideological difficulty and, by turning over to the works council a variety of chores which properly fall within the jurisdiction of a personnel management department, have effectively paralyzed the works council's freedom of action and ability of representing too forcefully the workers' interests. In general, most works councillors forget about that awkward twofold obligation and serve first of all (with a view for reelection) their constituents faithfully.

This strong feeling of company-mindedness was, furthermore, accentuated by the situation which confronted the German worker after 1945. In many cases, he returned from the war to find his home destroyed, his family dispersed, his beliefs shattered. To regain his job or to acquire a new one was more than economic necessity. It meant psychological as well as economic and social security. The job had become the symbol of normalcy, it represented often the only meaningful social institution which had survived. This job he will now defend against all comers, if necessary, even against the union. The identification of interest will be heightened where he rebuilt with his own hands his bombed working place, the machine at which he is working, and where the company, at a time when he needed it most, fed, clothed and housed him.

In the period of economic disintegration and currency inflation preceding monetary reform in 1948, the procurement of necessities sometimes involved collusion between works council and employer. In violation of the law, the company often turned its products over to the workers for them to barter for food with the farmer. Cement thus changed hands for potatoes. One works council in a Bavarian brewery is only now covering the deficit incurred from the sale of bicycle tires below cost to the workers with the gains from previous sales of food, which in turn had been acquired in exchange for beer. Apart from making works council and management comrades-in-crime and therefore less able to deal with one other at arm's length, such practices also increased workers' ties to the enterprise. By the same token, the union which, because of its obedience to the law, had failed to provide for the bare necessities of their members, lost popularity and face with the worker.

If company-mindedness prevails to such an extent, it is not surprising that the employer, unless confronted with a communist-dominated works council, prefers dealing with his works council to doing business with the union. A minority view, expressed by two employers' associations recognized, however, in the union the more stable, the basically more conservative, economic and social force as opposed to the quite unpredictable works council.

Manifestations of Company-Mindedness

The manifestations of this company-mindedness are quite serious. There have been cases of works councils: insisting on overtime work when the union opposed it in the interest of the unemployed; preferring the discharge of some employees to the union demand for shorter hours for all; applying to public labor offices for exemption from night-work prohibition laws for women in violation of union policy. A works council in a decartelized I.G. Farben plant in Ludwigshafen demanded the restoration of private stockholder rights because it had been convinced by management that this was a condition for foreign investment credits. At the same time, the unions were fighting such a move since it would jeopardize their hope for nationalization of the I.G. Farben empire. Works councils have been observed making unilateral demands on German and Occupation authorities to halt dismantling of plants, robbing thereby parallel union efforts of their effectiveness. Works councils are inclined to lobby government for credits and, in the past, also for relief from price control when such action cannot be supported by the union. Pioneering in a new and dangerous field of labor activities, one works council offered an exclusive sales contract to the works council of a customer firm to assure orders for the firm and jobs for the workers. When the Hamburg city government mobilized funds for work-relief, the number of persons employed fell to one-third of the estimate, inasmuch as the employed workers, through their works councils, pressed for a longer work week for those already employed. While the metal workers attempted to achieve equal pay for equal work for women workers in Berlin, the works councils of Siemens and Halske and AEG agreed in shop agreements to a considerable differential in favor of men. So strong is the pressure from below in these cases that a union which opposed family allowances and company housing in principle acquiesced in such practices when the works council of a rubber plant remained adamant.

The list could be prolonged ad infinitum ^{1/}. It should have become obvious by now that in all these cases the works council's action represented the true but short-sighted will of the employed. Involved here is not necessarily employer domination, certainly not democracy, but a conflict between the interests of the smaller and the larger group, between short and long-term benefits, a universal problem transcending the field of labor.

^{1/} See Dr. Herbert Bachmann in "Recht der Arbeit," 1949, p. 168 for further examples.

WORKS COUNCIL - A FACTOR IN UNION WEAKNESS?

To those who give unreserved support to the union as the only effective form of labor organization, the foregoing account would appear to amount to a severe indictment of the works council. But are these dangers specific works council problems? Are the Anglo-American unions which have been spared the necessity of adjusting themselves to legally-commanded works councils immune to dual and rival unionism? Would it not seem as if American unions also have to fight off communism and that they had met the identical problems with the very same methods which have been detailed here? American communists have been quite successful in the past in capturing shop steward positions, union office in locals and intermediate organizations and, at times, entire national and international unions.

Group egotism is by no means a monopoly of the Germans. There are many recorded cases where U.S. locals, to save the jobs and pay of their members, clashed with national union policy. In the depression, for instance, many American locals agreed to or acquiesced in wage rates below the collective bargaining rate. Control of the international union over some locals was often remote. Disciplinary action, expulsion, revocation of charters and sequestration of funds were rarely taken when depression - the period when locals are most likely to turn company-minded and to stray from the path of union policy - depleted union ranks and treasuries.

The dangers just discussed are, of course, ever present. They confront organized labor everywhere and can only be overcome by a vigilant and strong labor movement. What is lacking in the German labor movement is not vigilance but union strength. For a number of reasons, all clearly recognized by the DGB, the German unions are until now by no means as strong as they appear at first glance. The magnificent organizational record of over 5,000,000 members out of about 14,000,000 employed in the respective fields is offset by considerable internal weakness. Fortunately, most of the causes of this weakness are only temporary.

The weakness is partly a consequence of the Nazi regime which has led to a lack of leadership and to membership apathy. Much of the present-day leadership is superannuated. Only 30 percent of the present membership had the experience of a free democratic labor movement. Too many of the unionists of that period have been obliterated by Nazism, war and natural death. The other 70 percent knew only the frozen state-decreed wages of the Nazi period, and Dr. Ley's sham labor front. These younger workers are sceptical, distrustful of all organizations, be they unions or political groups. To them the DGB is not so greatly different from the compulsory German Labor Front (DAF). Besides distrust and apathy, there is the fear that any pronounced

activity in the cause of democratic labor may prove embarrassing in a change of the political situation. The followership attitude - never absent from the German scene and intensified by the Nazi period - still prevails. The slow development of constructive rank-and-file union life and of active membership participation in union affairs hinders, on the other hand, the rapid evolution of a definite responsibility on the part of the leaders towards the union members. The dangerous situation has besides its temporary causes a more deep-seated cause, namely the German union tradition. German and American literature have always berated German unionism for its high degree of centralization of power. This characteristic produces in turn a preference for political action as against the rough-and-tumble of direct economic action. The current unemployment, the depletion of union treasuries, and the fear that any strike may be utilized by the communists for their own purposes are not the only reasons why the unions, in the recent past, have been slow to resort to economic weapons. Such rationalization of the reluctance to strike, as labor's responsibility for the size of the national product, the danger that higher wages may loosen the inflationary spiral, the fear that strikes may lead to a resurrection of fascism and may endanger labor's chances for codetermination legislation, contain, of course, a grain of salt. Such considerations, however, have not deterred unions elsewhere in similar circumstances from achieving visible gains for their members.

Were one of the real reasons the leadership's fear that members would not follow a strike call or could not support a strike of long duration because of their insufficient resources, then this would indicate the need for higher wages and as a prerequisite therefor the need improving the internal cohesion of the movement. One way to this end is to "deliver the goods" which in turn may necessitate the use of economic as well as political pressure. The present-day unionists remember only dimly real bread-and-butter strikes. In several plants visited, the last strike for wages occurred in 1928. They know best the political protest strike of one or two hours duration. To stress political actions was perhaps inevitable before 1933 when the unions were closely linked to political parties. Even then, it proved dangerous for the unions to rely on political ideology alone to keep the membership in line as the events of May 1, 1933 proved.

The creation of politically neutral unions left them with only one purpose, namely, the improvement of the economic and social conditions of the workers. That aim can be achieved by the use of political and economic weapons. German labor history provides ample proof for the unreliability and impermanence of mere political and legal victories. The depression period proved for instance that the mere existence of the law guaranteed neither the formation or even the continued existence of works councils nor their freedom from employer

domination. Where union backing weakened, works councils became impotent, tools of management, or disappeared entirely. The great advantage which labor had seen in the law, namely its permanence and independence from the fluctuations of organizational strength proved futile. The high price labor had paid for securing its gains by the legislative method, namely the loss of greater gains individual unions in a strong bargaining position could have made, all this for the sake of labor solidarity, had been paid in vain. It has been the experience of unions everywhere that not the law alone, but the legally protected and sponsored voluntary agreement - sometimes arrived at only after an economic struggle - yields greater and more lasting gains. The foregoing discussion does not intend to question the German union's decision to strike or not to strike at any given point of time. It does not advocate the strike. It simply attempts to clarify to what extent the prevailing etatist line of thought affects the union's attitude towards economic action.

As far as the works council is concerned, Control Council Law No. 22 attempted to teach the lesson of voluntarism by changing the nature of the works council from a compulsory to a voluntary association of working men. Unlike the Weimar law, Law No. 22 does not compel but only permits the formation of works councils which would thereafter come about through agreement between capital and labor, company and union. While this may necessitate a show of force, more lasting and better results for the workers could be achieved in this fashion. The shop agreement concluded between the management and the works council of the AEG Berlin on the basis of Allied legislation gave the council and the union far greater benefits - and sooner - than all the State laws which followed.

Neither German employers nor German labor, however, was able and willing at that time to forsake legalism for the economism and voluntarism of the labor agreement. The Bavarian unions and employers in the metal industry, as well as the General Employers' Association and the DGB Wuerttemberg-Hohenzollern also used the opportunity offered by Law No. 22 for the purpose of producing a "model shop agreement." Their intention, however, was not to clear the way for voluntary agreements but to write another works council law with more specific provisions than the "frame" which Law No. 22 had erected. Instead of filling this "frame" by agreement, the parties preferred a "law" regardless of the fact that such laws tend to place a ceiling on workers' demands, a straitjacket on works council-employer relations, and finally an end to experimentation. Not even the new and democratic German trade unionism could free itself from the traditional spirit of etatism, of uniformity and "legality" which 12 years of Nazi domination had only reinforced. It proved unwilling and was probably at that time also unable to assume the risk of independent economic action.

Is the works council institution responsible for any of these weaknesses of the German labor movement? The basic adjustment which the trade union movement made in 1918-1920 to the works council movement caused, as noted previously, a division of functions which left to the works council the representation of all worker demands arising within the plant (intra-shop), and to the unions all supra-enterprise labor questions. This retirement from the problems of the shop and concentration on industry-wide and national problems increased the tendency of the German union towards centralization, political action, legalism and étatism. However, these characteristics of the German labor movement are so thoroughly founded in its tradition, its historical development, in the industrial life and in the make-up of German society, that the works councils contribution to this end appears almost negligible.

Consequently, the abolition of the works council which seems to be advocated in certain union quarters would fail by itself to change union weakness into union strength. It could be advocated only after the unions had established working substitutes for the works council: namely, locals, shop stewards and shop steward committees after the Anglo-American model. Such penetration of unions into the plant could render the works council obsolete, and might assist in producing that immediacy of contact between workers and union which is not too well developed now. It could create for the workers what has so aptly been called "the university of the union movement," real union democracy. It could inject life blood into the mass of organizational paper work which now characterizes so much of German union activities.

All of this needs more than a mere structural change, and would presuppose the eradication of all other causes of union weakness as well. To do away with the works council in the absence of an adequate and time tested substitute would be dangerous. Such action could easily intensify the always existing danger of calcification and bureaucratization, and increase the overdeveloped centralization of powers. Unquestioned abolition of the works council may end up by destroying one of the more effective checks on these trends. At present, such a move is probably quite unfeasible and politically unwise. It would be opposed to German tradition, by workers and employers, and by works council members who have very definite vested interests to defend. The union movement will probably have to continue living with the works council. It can do so successfully if it sharpens all the various tools of control it has developed. To use them to full advantage, it must gain in strength.

Fortunately, there are good reasons to assume that this may happen. Union leadership is and always has been very well aware of the need of increased missionary work among its members. A group

of splendid and energetic younger leaders is slowly maturing. The various international exchanges of labor leaders have produced some very salutary results in breaking down some of the more questionable German traditions. Even the attitude towards the strike has changed and the time may not be too distant when the German worker will again be able to point towards visible gains secured for him by the union.

COUNCIL-EMPLOYEE RELATIONS

The responsibility of the works council to the employees was defined in the 1920 law only in the formal sense that certain duties were incumbent upon the councils. Under the law, however, except for the annual elections, the employees had no practicable check by which they could regularly keep informed on council activities and express their views on past performance and future plans. Control Council Law No. 22 introduced an effective means by which the employees could exercise a direct influence on works councils in the form of a compulsory quarterly assembly of plant personnel at which the respective council must report on its activities to his constituents. This requirement has been reaffirmed in most German Land laws concerning works councils.

Works assemblies differ with respect to the importance of their accomplishments, with the run-of-the-mill meeting being rather disappointing from this point of view. Although the assemblies, which are conducted during working hours with no loss of pay, are well attended, hardly any discussion normally follows the formal report by the works council chairman and the address delivered by a union official except in those instances where Communist Party members use the occasion for their particular purposes. In one case observed, however, the skilful council chairman stimulated a very lively and constructive discussion from the floor through his imaginative handling of the meeting. In any event, the quarterly assemblies appear to serve the purpose of keeping the works council chairman aware of his responsibilities towards the employees.

Other convenient means of contact between the works council and the employees are to be found in council notices and announcements, which are usually posted on bulletin boards, the opportunity to visit the works council during its office hours, and by the visits which many works councillors make throughout the particular plant. In large enterprises, the problems of maintaining close contact with the employees and of reducing the inevitable social distance between the council and the rank-and-file are often present.

While the problem of contact is somewhat relieved by the union shop stewards who are an important link between the council and the employees, the question of social distance defies a simple solution. In being protected by law against dismissal, works council members tend to be set apart from the rest of the working force. This is particularly true of those council members who are relieved of their job and who perform the necessary office work incumbent in the discharge of their council duties.

Employee Attitude Towards Works Councils

Most employees seemed to regard the works council primarily as a grievance committee through which their claims could be presented to the management. No distinction was apparently made in their minds between the council and the union. The works council is seen merely as an adjunct of the union and part and parcel of the same thing - organized labor.

Moreover, the average employee views the institution of works council as his most intimate contact with the democratic process. His participation in this institution, one of the most important expressions of grass-root democracy in the German workers' experience, is far more real to him than his role in political life. He had been made even more aware of the inherent value of this means of self-expression by the abolition of works councils in the Soviet Zone of Occupation.

Works Councils and Union Democracy

Particularly in Western Berlin, the works council has turned into a symbol of the Western concept of democracy. The measure of independence from the union which the works council derives by law proved of tremendous importance in Berlin where the local trade union federation, the FDGB, was Communist-dominated. The council became the weapon by which the workers could free themselves from Communist leadership which did not have the confidence of the membership. The defeat of the Communist-sponsored candidates in the Western Berlin works council elections of 1947 and 1948 gave the non-Communist and majority opposition a bridgehead from which to conduct their battle for a democratic trade union organization.

The law which guarantees the works council's continued existence, provides for this institution at the same time a greater independence from the national union, than the usual union local processes. It would therefore appear that, better than a union local, the legally-independent works council can serve as a check on a national union or a union federation which no longer represents membership interests, be it because the union is torn by dissension or has fallen prey to a political party which subordinates workers' interests to their own purposes. Where the union has ceased to function, the independent works council continues to exist by virtue of the law and may thus provide some representation of employee interests which would otherwise be unrepresented. As long as the council exists, it also provides the opportunity for future unionization by an alert and aggressive labor organization.

Even where the union is functioning, the works council - better than any local labor group - may serve as a check on the proper operation of the national union, since it does not have to fear retaliatory union measures. A works council may, for example, prod a union which fails "to deliver the goods" and which incurs the danger of sacrificing immediate economic gains for the membership to far-fetched political ambitions in the broad economic field. Furthermore, it may relieve the excessive rigidity of industry-wide collective bargaining by entering into shop agreements which adapt the general rules to the special conditions of the individual enterprise. The works council may also provide remedial action where the uniformity of union action acts as a brake on obtaining for the workers of an individual plant gains greater than those provided by the collective agreement.

Most important, the works council may serve as a corrective to excessive union centralization and bureaucracy. It has to play its part in keeping the union responsive and democratic, the eternal union problem. This task is performed by the council by maintaining a critical and watchful attitude and by expressing the complaints of workers, members and unorganized alike. The danger of bureaucratization, which is inherent in all large-scale organizations, is probably greater in Germany than elsewhere. While the national union serves as a check on the company-mindedness of the local plant organization, the works council serves as a corrective directed against the central union administration becoming too remote from the day-to-day problems of German labor.

Finally, the works council, more so than the union, is the vehicle for any attempt to achieve the vague ideal of "industrial democracy." To use German terminology, it is primarily the works council which is considered - not only by the employers but also by the workers, whether rightly or wrongly - to be the proper exponent for the exercise of personnel, social, and economic codetermination.

Any appraisal of the works council will hence have to weigh the danger which this institution presents to the union against the danger which an overcentralized union, unchecked by works council, presents to labor. Furthermore, a clear picture must be gained as to what effective means exist to check both dangers. As was shown before, there are several methods which a strong union could utilize in curbing inimical works council activities. But no effective means, short of far-reaching governmental actions are known which can be relied upon to restore union democracy once it had been lost to an all powerful group of leaders.

WORKS COUNCIL - EMPLOYER RELATIONS

Works council-employer relations will be discussed here only with regard to three problems - the contribution of the works council to industrial peace, to production; and the role of the works council in personnel and social codetermination.

Industrial Peace

The consensus of all management representatives interviewed was that the works council contributes substantially to industrial peace. This claim - and the remainder of the following discussion - is, however, subject to one very important exception: Employer-works council relations are unsatisfactory in all cases where the works council is dominated by communists. Communist works council members see in their office an outpost in the class struggle and hope to maintain their own popularity with the workers by consistently raising demands which cannot be met and which they do not expect to see fulfilled. They regard stirring up labor unrest as an end in itself.

The major contribution to industrial peace which the works council can make lies in the settlement of grievances. It was found that, between 1945-1950, approximately 98 percent of all grievances in the twenty plants visited were settled amicably and finally by the parties themselves. In well-organized plants, only test cases were submitted to labor courts. Most of the labor court cases seem to come from smaller plants which have no works council or where the union has no influence. The duty imposed on the works councils by the Weimar law of safeguarding plant interests as well as worker interests prompts the works council and shop stewards to screen carefully all submitted complaints and to take to management only those which they deemed justifiable.

A further contribution towards industrial peace may be seen in works council insistence upon industrial discipline and plant morale. It may appear strange to hear of a works council chairman standing at the door of the shop to berate latecomers. A company which had introduced a voluntary sickness allowance was happy to report that the works council went into the homes of

potential malingerers to check on their ability to return to work. Another works council chairman consented to the discharge of his brother for petty larceny. Where management had taken the works council into the confidence - a practice which is far less widespread, particularly in middle size and small scale enterprises, than would be possible and desirable from management's viewpoint - the council assisted greatly in the introduction of new piece-rates and working methods. One KFD works council chairman defended the reputation of the company in a letter to a communist daily which had attacked the firm's labor practices.

In view of these achievements, no company objected to the cost of the works council. The direct costs are estimated at not above 1/3 to 1/2 of 1 percent of the payroll. These costs arise in law which compels the employer to free, according to the number of employed persons, a number of works council members from their work obligations, provides for payment for time lost by other works council members at council meetings and on works council business, and for reimbursement for time spent by all workers in the quarterly general plant assemblies held during working hours. Moreover, the company provides office space, secretarial assistance, etc. The indirect costs arising in connection with the works council, and which may be considerable, defy measurement. Some managers reasoned that these costs would have to be borne by the company in any event. They represent outlays for activities which, were there no works council, would devolve upon a personnel department.

Employers are also aware that the works council is of great value as a means of communication. As such, it was utilized more often as a source of information on workers' attitude, i.e. in the direction from the bench to management, than in reverse. Few companies took advantage of the chance for immediate contact with their employees which management participation in works assemblies affords. In a few cases the works council received space in the house organ. This had the advantage of making this institution which, in Germany, still carries a Nazi flavor more palatable to the workers. The conclusion is justified that the works council, far from impeding management - labor contact, actually increased and regularized the channels of communication. A small number of firms had acted upon a recommendation made in the "Visiting Expert Series" by C. E. Shaw, and had issued together with the works council regular reports of joint meetings. Unfortunately, some reports remained rather formalistic. Not all were made available to all employees individually.

Councils and Production

Management had not yet been able to develop a method by which the influence of the works councils could be brought directly to bear upon the production function. Sometimes the potentialities had not been fully recognized. This seems the more surprising since in many instances the conditions for such a development seemed unusually favorable. Where workers and managers had spent months and years in clearing the debris and rebuilding the working place, worker interest in productivity would seem to have been heightened. However, in this as in many other respects, tradition, the experiences of the Nazi period, and the attitudes of the parties towards a works council which is the result of legal compulsion proved insurmountable obstacles.

The "Lord of the Manor" ("Herr im Hause") attitude is by no means dead. Too many employers seem to think that they and the experts they can hire have a monopoly of the "know-how". To accept suggestions from the workers is considered an admission of incompetence and hence degrading. Such a move, it is feared, may open a dangerous wedge for workers demands. On the other hand the usual suggestion boxes are, in the minds of many workers, closely associated with the production drives and speed-ups of the Nazi period and the DAF.

Another hindrance is that the works council rests on the legal command, not on voluntary labor-management agreement. This accounts for a tendency to freeze works council-management relations into the legal pattern. Much too often, the legal minimum becomes the maximum and neither management nor works council is willing to extend the mutual relations beyond the provisions of the law. The origin in legal command has the effect of stressing the area of conflict while submerging the area of cooperation. If the experiences in the United States and Great Britain and other countries are taken into account, a contribution by the works council towards increased productivity could, however, be expected only on the basis of mutual confidence and trust. Such attitudes cannot be created by law although, once they are firmly established, they may be crystallized by legislation. This is not the case in Germany.

As a consequence, one company desirous of marshalling the specific technical experience and knowledge of its workers, has simply superimposed upon the works council a joint works committee of the British joint consultative committee type. This new venture proved rather a success and is now about, not merely to by-pass, but actually to replace the German works council in this particular (British-administered) enterprise. The possibility exists, furthermore, that a joint labor-management committee may prove to be superior in this respect to the one-sided German works council.

CODETERMINATION

Personnel Codetermination

Traditionally, German labor law distinguishes between personnel, social, and economic codetermination. The term codetermination implies that actions which formerly were taken unilaterally by the employer should be arrived at by agreement between labor and capital. The various laws differ as to the procedure to be followed in cases where agreement cannot be reached. They also differ as to the extent and the spheres of codetermination. In personnel matters, most laws provide for a works council veto against the hiring, transfer, promotion, and discharge of employees. In Hesse, the final decision in the first three types of cases is made by an arbitration board and in dismissal cases by the labor courts. In most laws, the works council veto has a staying effect except in emergencies. 1/ To give the works council a chance for taking a stand, it must be informed in advance of the hiring, transfer, etc., decision.

The works council veto in discharge cases was already provided for in the Weimar law. It represents probably one of the most important activities which the law assigned to this institution. To protect the job under all circumstances is the prevailing desire of the German worker. As a consequence, works council action is provided also in many special state laws regulating individual and mass discharges. In most of these laws, works council consent or its opinion is a prerequisite for a valid termination of the employment contract. 2/

The 1920 Works Council Law merely suggested a certain degree of works council influence upon hiring, transfers, and promotions. Veto by the works council in these cases is a novel feature of the State laws following the Allied victory. In practice the works councils rarely veto transfers and promotions. Objections to hirings were based largely upon the applicant's political past, particularly his activities during the Nazi period (and, in West Berlin, upon membership in the Communist party). Since the laws prohibit the exercise of the veto for political reasons, the objection was usually ascribed to the likelihood that the applicant would "endanger the social peace" or that his joining the company would "not be in the best interest of the enterprise." Vetos against hiring will therefore probably diminish in the future when the political behavior of the applicants will no longer provide grounds for rejection. The burden of proof of a

1/ In South Baden the employer may hire an employee for a trial period only if the works council has vetoed his action.

2/ According to the Bavarian law for the protection of discharges (Kuendigungsschutzgesetz para. 2, 3), works council consent to a discharge bars a workers suit for revocation of the dismissal. Here the works council settles the issue finally against the worker. cf. Decision of the Munich labor court of April 29, 1949, A.P. 50, p. 65. Similar provisions exist in Rhineland-Palatinate and Wuerttemberg-Hohenzollern.

contention that a candidate is likely to endanger the social peace may turn out to be too onerous. This should substantially ease the awkward situation which those laws create in permitting a veto against hiring even in the case of a superior, the personnel manager himself, for instance. In cases of hiring, transfer and promotion, it was generally felt that skilful employers had no difficulty in gaining works council agreement to managerial actions. The net effect was simply to inject between decision and execution a period devoted to the persuasion of the works council. Discharge cases will therefore remain the major element in the personnel codetermination sphere.

Social Codetermination

German social codetermination traditionally covers problems which 1) normally find their solution in the shop agreement and 2) works council participation in the administration of welfare schemes. The first group includes works council participation in the determination of piece rates, working hours, vacation roster, apprenticeship problems, and in the policing of company compliance with factory and protective labor legislation, accident prevention, and industrial hygiene.

Welfare institutions are of a considerable importance in the German industrial picture. Historically they represent voluntary, unilateral provisions made by a paternalistic management over and above the legal requirements of an elaborate social security system. Social codetermination could therefore constitute an attempt to transform the objects of employer benevolence into co-administrators by right. It is important to understand that the amount of funds which the employer contributes to these supplementary welfare schemes is not made subject to a common decision of works council and management. This vital decision is reserved to management under legislation.

It is surprising to note that most works councils show no great desire to terminate reminders of industrial feudalism such as company housing, company-sponsored emergency cash funds, etc. The employer attitude in this respect is equally astonishing. Management's main preoccupation seemed to be to protect such welfare schemes as pension fund, hospital, etc., from codetermination by clothing them with an independent legal personality. Such subterfuges have been very successful even in Hesse and Wuertemberg-Baden where legal resistance had to be overcome. Where this approach was not feasible, the works councils were granted not equal but only minority representation in the administration of the respective schemes. Only some enlightened companies saw in social codetermination an excellent means of gratifying a very deeply-felt desire of labor with a chance for diminishing the administrative cost of such schemes. The effects which a generous attitude in this respect would have on worker morale were not always fully recognized.

Economic Codetermination (worker participation in the economic, financial and technical management of the enterprise)

The most controversial issue in the entire field of industrial relations in present-day Germany is, of course, the problem of economic codetermination. Unfortunately, very little evidence of the actual operation of the various forms this much publicized set of rights assumes, could be gathered. A federal law had not yet emerged. Since this report restricts itself to a review and analysis of observed facts, no attempt will be made here to summarize the various proposals and the tremendous literature on this subject. Only after such a law is passed and put in operation would a critical evaluation of the entire problem be meaningful. After sufficient maturation, it would provide a proper subject for investigation.

The lifting of the suspension of the economic codetermination provisions in the Hesse and Wuerttemberg-Baden laws in April of 1950 had not yet had any visible results. In Hesse, a conservative political party, the FDP, had filed a suit against the State of Hesse before the supreme court of constitutional law claiming that Hesse was not entitled to put its law into effect as long as the very same matter was being considered by the German Federal Government. Whatever the merits of this contention may be, the law suit had the effect of preventing employer compliance with the Hesse law. On the other hand, the unions in Hesse were not yet ready to press the issue.

In Wuerttemberg-Baden, the provisions of para. 20ff pertaining to economic codetermination were also not in operation. The arbitration boards which would be charged with the adjudication of disputes had not yet been established. The admission of two works council members to the supervisory board (board of directors) was still waiting for a governmental decree. The very limited economic codetermination rights of the Wuerttemberg-Hohenzollern law (para. 66, b-h) had never been used by the unions. Finally paras. 21(3)-23 of the South Baden law shared the fate of the Wuerttemberg-Baden provisions. They remained inoperative until an authority charged with the determination of controversial issues would be enacted by law.

The decartelized steel industry offered the sole example of some aspects of economic codetermination. It was felt, however, that since this industry was operating at present under a strictly transitional administration and under special and non-typical conditions, no generally applicable conclusions could legitimately be drawn from this experience.

COUNCIL-COMMUNITY RELATIONS

This investigation could unearth no evidence of any efforts by the works council to enter into relations with the community. There is no room for any extra-curricular activities in the way the works council thinks of its mission. The area of legitimate works council activities is circumscribed by law. Although the law may not have intended this list to be exhaustive, practice and tradition have seen in it a maximum of permissible action. To transgress this area is, unconsciously at least, considered a breach of the law. The strict compartmentalization of institutional activities has limited the works council's legitimate sphere of operation to the plant. It does not provide for participation in the wider area of the community. As a consequence, no such actions take place. The only cases in which an extension of works council activities could be noted were a few collections for victims of industrial accidents in neighboring plants as an expression of workers solidarity.

CONCLUSIONS

1. The dual nature of the modern union as a political and as a business organization has long been recognized in practice and literature. The first aspect makes the union one of the most democratic expressions of rank-and-file sentiment in present-day society. Its business character requires, as in all business organizations, a strong, at times even dictatorial, leadership. In the eternal struggle between union democracy and the need for strong leadership, the local plant organization must be the strong advocate of the popular cause. There is some evidence to the effect that the independent works council is in a stronger position to play this role than a dependent union local. Many observers will agree that any expression of genuine democratic action in German life should be encouraged. The labor scene is no exception. It would hence appear that at least for the present, the works council, with all its shortcomings fulfills a useful task. This institution certainly has its dangers for the unions, but these can be checked effectively by a vigilant and strong union movement. The German labor movement gives all indications of awareness of the problem and of the need for strengthening its organization. To this latter end it is very advisable to give a high priority to the task of creating a stronger cohesion within its ranks, particularly between leadership and rank-and-file membership.

2. The German employers are at present devoting so much effort to fighting off of union demands for participation in the management (economic codetermination) that they occasionally forego taking full advantage of the opportunities for improving management-labor relations, which the works council offers. It is to be expected that this situation will change in time, i.e. with the final settlement of the codetermination issue on the federal level, with the continued decrease of communist influence in works councils, and with the return of more normal business conditions.

3. Only if employers and unions give their unreserved approval to a federal law, will the institution works council be able to yield the full benefits which its proponents expect from it. Only then will it become an instrument of industrial peace and at the same time a powerful aid in the effort for increased productivity.

